

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF HAMILTON            )       CAUSE NO.

)  $SS:$

STATE OF INDIANA ex rel. )  
STEVE CARTER, ATTORNEY GENERAL OF )  
INDIANA )

Plaintiff,

JANUARY 16, 2004

V.

EARLHAM COLLEGE )  
as trustee of a public charitable trust(s) created by )  
Eli Lilly to operate and maintain Conner Prairie, )

Defendant.

## PETITION FOR ACCOUNTING

Steve Carter, Attorney General of Indiana, by counsel, for his Petition for Accounting states:

## I. Jurisdiction

1. Pursuant to Ind. Code § 30-4-5-12(c), the Attorney General is empowered to petition this Court to direct the trustee of a trust for a benevolent purpose to file a verified written statement of accounts.

2. The Attorney General, appearing as a public officer, is the proper party to maintain litigation involving questions of public charitable trusts. *Boice v. Mallars*, 121 Ind. App. 210, 216-17, 96 N.E.2d 342, 344-45 (1950).

3. This Petition relates to the administration of public charitable trust(s) created in favor of the Conner Prairie outdoor living-history museum, that includes the William Conner residence and related buildings and grounds upon which the museum operations are conducted (hereinafter the Museum) located in Hamilton County, Indiana.

4. The public-at-large is a beneficiary of said public charitable trust(s).
5. The Attorney General thus brings this action on behalf of the public-at-large of the state of Indiana as the representative beneficiary of said public charitable trust(s).

## II. Venue

6. Pursuant to Trial Rule 75(A)(2) of the Indiana Rules of Trial Procedure, venue of this case is in Hamilton County, Indiana, because the situs of the land that was conveyed in trust to Earlham College for the benefit of Conner Prairie is in Hamilton County, Indiana, and there is an outstanding in rem issue regarding the number of acres that is currently part of the corpus of the public charitable trust(s).

7. In addition, venue per the Trust Code, Ind. Code §30-4-6-3, is satisfied in that substantial records pertaining to the administration of the trust are located in Hamilton County, including but not limited to, the recorded deeds, income and expenditure records, maintenance records, payroll records, training records and other records that are required for the allocation of income and/or principal from the trust(s) for the operation of the Museum per Lilly's terms for the trust(s).

## III. Parties

8. Plaintiff Steve Carter is the duly elected and serving Attorney General for the State of Indiana. Pursuant to Ind. Code § 4-6-1-6 and Ind. Code § 30-4-5-12(c), the Attorney General is authorized to represent the public interests of the State of Indiana as beneficiary of public charitable trusts. Specifically, Attorney General Carter is authorized by Ind. Code § 30-4-5-12(c) to petition this Court to require a trustee to file a verified written accounting of the assets of the trust.

9. Defendant Earlham College (hereinafter Earlham) is a non-profit domestic corporation and educational institution with headquarters in Richmond, Indiana, incorporated and doing business in the State of Indiana.

#### IV. Factual Background

10. In 1964, Mr. and Mrs. Eli Lilly transferred approximately 58 acres of a 1,430 acre tract in Hamilton County to Earlham as the trustee of a public charitable trust.

11. The operative language of the conveyance stated that “[Earlham] will hold this parcel in perpetuity as a public charitable trust; that it will keep and maintain all improvements situated thereon and related to the Conner House and Monuments in a good state of repair in all respects....” *Warranty Deed from Eli and Ruth A. Lilly to Earlham College; recorded in Book 185, pages 335-336 in the Hamilton County Recorder’s Office*, attached and marked Exhibit 1.

12. Earlham formally accepted its role and duties as trustee with respect to the 58-acre tract. *Formal acceptance by Earlham Board of Trustees on December 14, 1963, recorded in Book 185, pages 337-338 in the Hamilton County Recorder’s Office*, attached and marked as Exhibit 2.

13. A Deed of Gift was signed by Lilly on January 24, 1969, conveying 40,000 shares of Eli Lilly and Company stock to Earlham indicating the “primary purpose of this gift is to enable Earlham College to maintain and operate the Conner Prairie Farm Museum Complex....” In the Deed of Gift, Lilly clearly sets out the terms and restrictions under which Earlham is to administer the assets transferred to Earlham for the benefit of the Museum. *Deed of Gift dated January 24, 1969*, attached and marked as Exhibit 3.

14. The 1969 Deed of Gift created a public charitable trust with the specific provision that the initial corpus (not to exceed 20%) could be used for capital improvements in the physical facilities of the Conner Prairie Farm Museum complex and that “the remainder of the gift should be assigned for the establishment of a special endowment fund to be managed by the Board of Trustees...the income from which shall be used in the first instance to support the annual operating budget of the Conner Prairie Farm Museum Complex....” Any remaining income could then be used by Earlham in such manner as the Trustee deemed appropriate in the discharge of its primary function of conducting a liberal arts college.

15. On June 4, 1973, Lilly made a gift of 213,000 shares of Eli Lilly and Company Stock to Earlham.

16. The 1973 gift was accompanied by an “Agreement.” The Agreement implicitly acknowledged the creation of a charitable public trust by establishing a special endowment fund (hereinafter the 1973 Fund) and again specifying the restriction that “the first charge upon the income from [the 1973 Fund] shall be for the support and maintenance of the William Conner residence and surrounding buildings that form Conner Prairie Settlement in Hamilton County, Indiana, and its operation as an historical site for the education and enjoyment of the public on such a scale and in such manner as may be determined by the Earlham College Board of Trustees.” Consistent with previous gifts, any remaining income could be used by Earlham for its college educational programs and projects but the principal could only be used for the Museum. *Agreement dated June 4, 1972, signed by Landrum Bolling, President Earlham College, attached and marked as Exhibit 4.*

17. Lilly died on January 24, 1977. Lilly's will signed on May 29, 1973, provided for a gift to Earlham of 10% of the value of his residuary estate. Specifically, the gift under the will conveyed 309,904 shares of Eli Lilly and Company stock to Earlham. *Last Will and Testament of Eli Lilly signed May 29, 1973*, attached and marked as Exhibit 5.

18. Lilly's will created a public charitable trust as it expressly conditioned that the income from the bequest to Earlham and principal, if necessary "shall be subject to a first charge in such amounts as may reasonably be required from year to year for the general maintenance, support, construction, reconstruction and restoration of the William Conner Residence and surrounding grounds and structures.... Any income from such fund (but no principal) remaining after performance of the foregoing provisions...may be used for the general support of Earlham College as its Trustees shall determine."

19. Considered individually or together, the character of the Lilly gifts to Earlham set out in the preceding paragraphs is that of a public charitable trust or trusts. The assets in the Fund were clearly entrusted to Earlham for the benefit of the Museum. As established in the preceding paragraphs the 1964 land conveyance, the 1969 and 1973 gifts of stock, and the 1977 bequest from Lilly all subject Earlham to specific terms which give operation and maintenance of the Museum priority over the income and limit invasion of the principal to only capital improvements for the Museum.

20. The Indiana Attorney General is the only person having the standing to enforce the terms of said charitable trust(s) to ensure that the public receives the benefits intended by Lilly.

21. To the best of his information and belief the Indiana Attorney General has never received a verified certification from Earlham that a written statement of accounts is available per Ind. Code §30-4-5-12(b) nor been served with a written statement of accounts filed by Earlham in any Indiana court.

#### V. Contentions

22. The Attorney General hereby incorporates by reference Paragraphs 1-21 of this petition.

23. The assets of the public charitable trust conveyed by Lilly and held in trust by Earlham for the Museum exceed \$500,000.

24. Earlham is not an organization released from the Ind. Code § 30-4-5-12 (b) certification requirements because of an exemption under Section 6033(a)(2)(A)(i) or Section 6033(a)(2)(A)(ii) of the Internal Revenue Code.

25. Indiana Code § 30-4-5-12(b) provides as follows:

(b) This subsection applies to a charitable trust with assets of at least five hundred thousand dollars (\$500,000). The trustee of a charitable trust shall annually file a verified written certification with the attorney general stating that a written statement of accounts has been prepared showing at least the items listed in section 13(a) of this chapter. The certification must state that the statement of accounts is available to the attorney general and any member of the general public upon request. A charitable trust may not be exempted from this requirement by a provision in a will, trust agreement, indenture, or other governing instrument. This subsection does not prevent a trustee from docketing a charitable trust to finalize a written statement of account or any other lawful purpose in the manner provided in this article. However, this subsection does not apply to an organization that is not required to file a federal information return under Section 6033(a)(2)(A)(i) or Section 6033(a)(2)(A)(ii) of the Internal Revenue Code.

26. The contents in the written statement of accounts required to comply with Ind. Code § 30-4-5-12(b) are set out in Ind. Code §30-4-5-13(a) as follows:

(a) A verified written statement of accounts filed with the court under 30-4-5-12 or by the trustee under 30-4-3-18(b) shall show:

- (1) the period covered by the account;
- (2) the total principal with which the trustee is chargeable according to the last preceding written statement of accounts or the original inventory if there is no preceding statement;
- (3) an itemized schedule of all principal cash and property received and disbursed, distributed, or otherwise disposed of during the period;
- (4) an itemized schedule of income received and disbursed, distributed, or otherwise disposed of during the period;
- (5) the balance of principal and income remaining at the close of the period, how invested, and both the inventory and current market values of all investments;
- (6) a statement that the trust has been administered according to its terms;
- (7) the names and addresses of all living beneficiaries and a statement identifying any beneficiary known to be under a legal disability;
- (8) a description of any possible unborn or unascertained beneficiary and his interest in the trust estate; and
- (9) the business addresses, if any, or the residence addresses of all the trustees.

27. Earlham has never filed a verified certification with the Attorney General that a statement of accounts is available to the Attorney General or any member of the general public upon request as required by Ind. Code § 30-4-5-12(b).

28. Before 2000, the trustees of charitable trusts of any size (not just those in excess of \$500,000) were required to make similar filings with the court of the county in which the principal place of administration of the trust was located. Upon information and belief, Earlham has never filed with any Indiana court a verified written statement of accounts for the trust it holds for the benefit of Conner Prairie.

**WHEREFORE**, the Attorney General pursuant to Ind. Code § 30-4-5-12(c) and his common law authority regarding questions involving public charitable trusts requests this Court to instruct Earlham to file a verified written statement of accounts with the Office

of the Attorney General and this Court in compliance with Ind. Code §§ 30-4-5-12(b) and –13(a) for the Lilly gifts and assets conveyed to Earlham for the benefit of the Museum as set out in paragraphs 1-21 of this Petition, commencing with the conveyance of the 58 acres in 1964 to the present date.

LOCKE REYNOLDS LLP

BY: \_\_\_\_\_

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